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MONTANA LEGISLATIVE HISTORY

Chapter 1 1985

Bill H 15 S _____ Original bill & history ____C

H. Committee on Education + Cultural Resources		S. Committee on Labor + Employment Relations	
Hearing Date(s) Jan 09	✓ C	Hearing Date(s) Jan 15	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Jan 09	✓ C	Jan 15	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE FINAL STATUS

1/12	3RD READING PASS	93	0
	TRANSMITTED TO SENATE		
1/14	REFERRED TO JUDICIARY		
2/13	HEARING		
2/13	COMMITTEE REPORT-BILL CONCURRED		
2/15	2ND READING CONCURRED	50	0
2/18	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
2/21	SIGNED BY SPEAKER		
2/22	SIGNED BY PRESIDENT		
2/22	TRANSMITTED TO GOVERNOR		
2/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 38 EFFECTIVE DATE: 10/01/85		

HB 14 INTRODUCED BY ASAY
CREATING INDIAN AFFAIRS COMMITTEE UNTIL 1991
BY REQUEST OF INDIAN AFFAIRS COMMITTEE

1/07	INTRODUCED		
1/07	REFERRED TO STATE ADMINISTRATION		
1/10	HEARING		
1/10	COMMITTEE REPORT-BILL DO PASS		
1/11	REREFERRED TO APPROPRIATIONS		
3/25	HEARING		
3/28	COMMITTEE REPORT-BILL PASS AS AMENDED		
3/30	2ND READING PASS	96	2
4/01	3RD READING PASS	96	3
	TRANSMITTED TO SENATE		
4/03	REFERRED TO FINANCE & CLAIMS		
4/10	HEARING		
4/12	COMM REPORT-BILL CONCURRED AS AMENDED		
4/15	2ND READING CONCURRED	49	0
4/17	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/19	2ND READING AMENDMENTS CONCURRED	94	2
4/20	3RD READING AMENDMENTS CONCURRED	95	2
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 675 EFFECTIVE DATE: 5/06/85		

HB 15 INTRODUCED BY M. WILLIAMS
DENYING CERTAIN UNEMPLOYMENT BENEFITS TO SCHOOL EMPLOYEES
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

1/07	INTRODUCED		
1/07	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/09	HEARING		
1/10	COMMITTEE REPORT-BILL DO PASS		
1/10	FISCAL NOTE REQUESTED		
1/11	2ND READING PASS	76	24
1/11	ON MOTION RULES SUSPENDED		

PLACED ON THIRD READING THIS DAY
1/11 3RD READING PASS 76 23

TRANSMITTED TO SENATE
1/12 REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/15 HEARING
1/15 COMMITTEE REPORT-BILL CONCURRED
1/16 FISCAL NOTE RECEIVED
1/16 2ND READING CONCURRED 40 6
1/16 ON MOTION RULES SUSPENDED 47 0
PLACED ON 3RD READING THIS DAY
1/16 3RD READING CONCURRED 43 5

RETURNED TO HOUSE
1/17 SIGNED BY SPEAKER
1/17 SIGNED BY PRESIDENT

1/17 TRANSMITTED TO GOVERNOR
1/17 SIGNED BY GOVERNOR
CHAPTER NUMBER 1 EFFECTIVE DATE: 1/17/85

HB 16 INTRODUCED BY MARKS
DEFINE PUBLIC AND PRIVATE RIGHTS RELATED TO RECREATIONAL USE OF STATE WATERS
BY REQUEST OF INTERIM SUBCOMMITTEE NO. 2

1/07 INTRODUCED
1/07 REFERRED TO JUDICIARY
1/22 HEARING
DIED IN COMMITTEE

HB 17 INTRODUCED BY MARKS
ELIMINATING CIVIL REMEDY FOR TRESPASS AND NOTICE FOR CRIMINAL TRESPASS
BY REQUEST OF INTERIM SUBCOMMITTEE NO. 2

1/07 INTRODUCED
1/07 REFERRED TO JUDICIARY
1/10 FISCAL NOTE REQUESTED
1/17 FISCAL NOTE RECEIVED
2/14 HEARING
2/22 ADVERSE COMMITTEE REPORT
2/23 ON MOTION TAKEN FROM ADVERSE COMMITTEE REPORT, REFERRED TO 2ND READING
3/05 2ND READING DO NOT PASS 60 37
3/06 BILL KILLED

HB 18 INTRODUCED BY DONALDSON, EUDAILY, ET AL.
GOVERNANCE OF VO-TECH CENTERS BY NEW STATE BOARD; LOCAL CONTROL ABOLISHED

1/07 INTRODUCED
1/07 REFERRED TO EDUCATION & CULTURAL RESOURCES
1/10 FISCAL NOTE REQUESTED
1/17 FISCAL NOTE RECEIVED
1/18 HEARING
2/18 COMMITTEE REPORT-BILL PASS AS AMENDED
2/18 STATEMENT OF INTENT ATTACHED
2/22 2ND READING PASS AS AMENDED 68 31
2/25 3RD READING PASS 62 36

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. HB 0015.1

Form BD-15

In compliance with a written request received January 10, 19 85, there is hereby submitted a Fiscal Note for H.B. 15 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

H.B. 15 is an act to deny unemployment insurance benefits to non-professional school employees between academic terms and to all school employees during vacations and holidays.

ASSUMPTIONS:

1. Benefit expenditures for State and Local entities will be $5,150,000 and $5,700,000 for FY 1986 and FY 1987 respectively.
2. Benefit charges for school employees will be $2,235,000 FY 1986 and $2,350,000 FY 1987.
3. Benefit charges attributable to nonprofessional school employees are approximately 80% of total school employee benefits.
4. Based on a survey of school districts, 95% of the nonprofessional employees will have reasonable assurance of returning to work each term.

FISCAL IMPACT ON STATE SPECIAL REVENUE ACCOUNT:

1. Benefits and Claims Expenditures:

	FY 1986	FY 1987
Current Law	$ 5,510,000	$ 5,700,000
Proposed Law	3,450,000	3,915,000
Net Difference	$(1,700,000)	$(1,785,000)

LONG RANGE EFFECTS:

Long term lowering of Unemployment Insurance tax rates for state and local governments.

TECHNICAL NOTE:

Adoption of this legislation is required to be in compliance with federal regulations.

David L Hunter

BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 15, 1985

FN1:L/1

MINUTES OF THE MEETING
EDUCATION & CULTURAL RESOURCES COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

January 9, 1985

The Education & Cultural Resources Committee meeting was called to order January 9, 1985 by Chairman Harrington at 2:30 p.m. in Room 312-3 of the State Capitol Building.

ORGANIZATIONAL MEETING: Chairman Harrington requested that each committee member make a brief introduction of themselves. He also reviewed the operational procedures which will be used in committee as follows: 1) the chairman will call for the bill sponsor, proponents and opponents; 2) questions will them be directed at the bill sponsor and witnesses; 3) sponsor will be asked for closing statements;4) executive action will be reserved for the end of the meetings after bills are heard. Chairman Harrington stated that Mr. Eudaily, the Vice-Chairman will share responsibility for chairing the committee. Members of the Judiciary and Education Committees who share Room 312-3 were asked to contribute $5 towards purchase of a coffee pot and supplies if they so desire.

HOUSE BILL NO. 15: Hearing commenced on House Bill No. 15. Representative Melvin Williams, District #85, who sponsored the bill at the request of the Department of Labor and Industry explained that the bill will bring the Montana unemployment insurance law into conformity with Federal law. It seeks to deny unemployment insurance benefits to non-professional school employees (clerical workers, bus drivers, janitors, etc.) during the summer and holidays. Professional employees already are forbidden by law from collecting unemployment benefits during this time. Congress passed a law in 1983 requiring states to change their laws by April 15, 1984. Representative Williams hoped for immediate action as the State has a lawsuit against the Department of Labor for non-compliance.

Chairman Harrington called for proponents. Dave Wanzenried, Commission on Labor Disputes, introduced Exhibit 1. He reiterated that Congress is requiring the state to enact this legislation. The January 18 deadline is important because the following week the Federal Government sends out tax notices to employers. Proposed amendments would jeopardize conformity. Note subsection 2c on Exhibit 1 which states that the unemployment insurance benefits for the State of Montana will terminate if they are out of compliance.

Proponent Forest Bull, President of the Montana Chamber of Commerce, spoke of his concern for the employers of Montana and the penalty they would pay if the bill were not passed.

Proponent Chip Erdmann representing the Montana School Board Association spoke for the bill as unemployment insurance costs places a burden on the school district and employees know they have a job for the next school year.

Proponent George Allen, Montana Retail Association voiced support of the bill as unemployment was not set up as a supplement to

annual income, but to help those who have lost their job through no fault of their own. (Exhibit 2)

Proponent Bill Anderson, Deputy Superintendent, Office of Public Instruction voiced fairness in this bill as these people start as volunteers, then accept the part-time conditions. Also the premiums for the unemployment insurance are a factor.

Proponent Jess Long, School Administrators of Montana spoke in favor of this legislation.

Proponent Don Waldron, Superintendent of Schools in Missoula, urged passage of the bill.

There being no further proponents, Chairman Harrington called for opponents of HB 15. Don Judge, Montana State AFL-CIO, addressing the Committee urged consideration of the consequences of adoption. He voiced displeasure with the amendments to the Social Security Act of 1983 which created this provision. School district employees must comply with parts of the law in order to receive compensation. That means that they are available and seeking and accept work if offered. Burdensome to find employment for only the summer months. Employees are not highly paid, bottom of economic scale. These people draw minimum weekly unemployment benefits. Many times they are sole supporters of their families and cannot find employment in the summer. For economic reasons, these people may have to find permanent employment outside the school district. Provision in question is that of reasonable assurance, he hoped that assurance could be in writing. Another problem is that benefits will be paid retroactive during weeks which they file for benefits. In order to get them they have to apply every day, seek and find and accept employment and it seems unfair to ask them to do this. Other agencies will be paying for assisting these people and it is only a transfer of responsibility.

Opponent Linda Gordon from Anaconda spoke of being the lowest paid personnel in the school district. She makes $400 per month and supports a family of five. Benefits last summer were $68 per week, without them this summer people will be forced to go to public assistance for survival. She asked for a resolution urging Congress to repeal this law. Question of what is reasonable assurance.

Opponent and school bus driver Fran O'Farrell from Butte relayed that she would be forced to seek other employment and showed concern for doing so at her age. Hard finding employment for just three summer months. Received benefits of $78 per week which kept her from seeking public aid. Asked to have a resolution adopted so that Congress would repeal this law.

Opponent Jim McGarvey, Montana Federation of Teachers, registered opposition as to the merits of the bill. Urged that Federal Government be shown that it does great damage to a section of Montana.

Opponent Phil Campbell from the Montana Education Association stands in opposition to the method of singling out school workers from other professions and is discriminatory.

There being no further opponents, questions were called for from the Committee. Representative Nelson asked Representative Williams if he had estimates of the number of people affected--the question was referred to Dave Wanzenried who responded he would try to come up with the figures.

Chairman Harrington questioned Representative Williams if contracted bus drivers would be affected. Representative Williams answered that any private bus services would not be affected but only those directly employed by the schools. Representative Harrington questioned if this would be setting precedence for discriminatory practices.

Rep. Williams questioned Superintendent Waldron of his interpretation of reasonable assurance. Reply was it would be in the form of a letter after evaluations were in in the spring. He was happy to see the retroactive benefit in the bill.

Discussion was held whether the letter of intent would be a binding contract and it was generally agreed that it would be in terms of this bill.

Discussion was held regarding the unemployment insurance portion paid by the employer would be greater as it is a bigger risk. It was estimated that it would be a savings of 1.7 million dollars per year. Currently 1,200 employees file for the benefit, responded Dave Wanzenried.

Chairman Harrington requested closing remakrs by Rep. Williams. Realizing the hardships involved with lack of jobs, he reiterated that the State of Montana and employers will be placed under greater strains and opposes any amendments at this time. Conformity is needed to the 1983 law and urges immediate action.

HOUSE BILL NO. 100: Hearing commenced on House Bill No. 100 with a call to its sponsor, Representative Dave Brown from District 72. He explained that it came as a surprise to him that kindergartens were allowed but not mandated. There are 383 elementary school districts in Montana with 289 districts offering kindergarten, leaving 94 districts (approximately 600 children) or 5% of the population turning 5 years old before September 10th without public kindergartens. Funding would be minimal; the foundation program has presently allocated $146,965,965 per school year. Monies are based on ANB enrollment. Per student costs would be $1,411. Kindergarten students would get half the ANB cost at $706 giving $423,000 to the districts. The normal class of 20 students morning and afternoon would be $28,240 with the average teacher's salary at $19,700. He stated feeling that kindergarten is a starting point in society for socialization skills.

DAILY ROLL CALL

EDUCATION COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-8-85

NAME	PRESENT	ABSENT	EXCUSED
Dan Harrington	✓		
Ralph Eudaily	✓		
Ray Brandewie	✓		
William Glaser	✓		
Joe Hammond	✓		
Thom Hannah	✓	✓ (late)	
Raymond Harbin	✓		
Roland Kennerly	✓		
Les Kitselman	✓		
John Mercer	✓		
John Montayne	✓		
Richard Nelson	✓		
Jerry Nisbet	✓		
Ray Peck	✓		
Jack Sands			✓
Ted Schye	✓		
Fred Thomas	✓		
Mel Williams	✓		

STANDING COMMITTEE REPORT

JANUARY 9 19 85

MR. SPEAKER

We, your committee on EDUCATION & CULTURAL RESOURCES

having had under consideration HOUSE Bill No. 15

FIRST reading copy (WHITE)
color

DENYING CERTAIN UNEMPLOYMENT BENEFITS TO SCHOOL EMPLOYEES

Respectfully report as follows: That HOUSE Bill No. 15

DO PASS

JW 1/9/85 9:55

STATE PUB. CO.
Helena, Mont.

REPRESENTATIVE HARRINGTON Chairman.

COMMITTEE SECRETARY

ROLL CALL VOTE

HOUSE COMMITTEE EDUCATION

DATE 1-9-85 HB Bill No. 15 Time 4:30

NAME	(15) YES	(2) NO
Dan Harrington		✓
Ralph Eudaily	✓	
Ray Brandewie	✓	
William Glaser	✓	
Joe Hammond	✓	
Tom Hannah	✓	
Raymond Harbin	✓	
Roland Kennerly	✓	
Les Kitselman	✓	
John Mercer	✓	
John Montayne	✓	
Richard Nelson	✓	
Jerry Nisbet		✓
Ray Peck	✓	
Jack Sands		
Ted Schye	✓	
Fred Thomas	✓	
Mel Williams	✓	

Secretary

Chairman

Motion: H.B. 15 do pass, motion made by Mel Williams second by Ted Schye

CS-31

EXHIBIT 1
H.B. 15
1-9-85

DENIAL OF UNEMPLOYMENT INSURANCE BENEFITS FOR NON-PROFESSIONAL SCHOOL EMPLOYEES BETWEEN TERMS

1. Mandatory that all states adopt this Congressional Act as part of their state law. (Effective April 1, 1984.)

2. Failure to enact will result in Montana being declared out of conformity with the U.S. Department of Labor. A non-conformity decision could result in the following action:

   a. Loss of Federal Unemployment Tax credit for all state employers: currently 2.7% on first $7,000 of wages; the tax credit amounts to $36 million per year.

   b. Loss of administrative support dollars to operate the Montana unemployment insurance system which would effectively shut down the current program; $16 million per year.

   c. Section 39-51-106 provides that if a state unemployment law is out of conformity with a federal law, the unemployment insurance laws of Montana will immediately terminate and have no force or effect.

3. A preliminary finding of non-conformity was delayed through a compromise agreement. The terms of the agreement require passage of the legislation by January 18, 1985, with a retroactive effective date of October 28, 1984.

Part 26 — Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances.
39-51-2602. Approved trade readjustment training.

Parts 27 through 30 reserved

Part 31 — Protections and Limitations on Rights and Benefits

39-51-3101. Protection against self-incrimination.
39-51-3102. Certain agreements in violation of chapter void.
39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation.
39-51-3104. Limitation of fees in claim for benefits — penalty for violation.
39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.
39-51-3106. Child support interception of unemployment benefits.

Part 32 — General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.
39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty.
39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty.
39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty.
39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed.
39-51-3206. Liability for wrongful or improper receipt of benefits.

Part 1

General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of

employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" near the end of (1).

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" near the end of the first sentence.

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.

Part 2

Definitions

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the four quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 18 months of the individual's last employment.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter.

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the law; except that—

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) compensation payable on the basis of such services shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess,

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions, and

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

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THE UNDER SECRETARY OF LABOR
WASHINGTON, D.C.
20210

RECEIVED
1984
DEPT. OF LABOR & INDUSTRY
COMMISSIONER'S OFFICE

In the Matter of

STATE OF CALIFORNIA
Employment Development
Department

STATE OF IDAHO
Department of Employment

STATE OF MONTANA
Department of Labor and
Industry

COMMONWEALTH OF PUERTO
RICO
Department of Labor

Case No. 84-CCP-3

FINAL DECISION AND ORDER

Pursuant to a Notice of Hearing, published on September 12, 1984, 49 FR 35878, proceedings were instituted with respect to the conformity of the States of California, Idaho, and Montana and the Commonwealth of Puerto Rico with the requirements of section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA), codified at section 3304(a)(6)(A) of the Internal Revenue Code of 1954, 26 U.S.C. § 3304(a)(6)(A), as amended by Section 521(a)(2) of the Social Security Amendments of 1983 (Public Law 98-21, 97 Stat. 147).

Subsequent to the issuance of this notice, each of the aforementioned respondents entered into separate stipulation agreements with the U.S. Department of Labor (DOL), and, on the basis of these stipulations, a hearing on the issues raised

in the notice was waived. On October 9, 1984, Administrative Law Judge Nicodemo DeGregorio issued a recommended decision based on the provisions of the individual stipulations. The matter is now before me for decision under section 3304(c) of FUTA, 26 U.S.C. 3303(c).

Based upon my review of the record in this case, I make the findings set forth below.

State of California. The unemployment compensation law of the State of California was amended, on September 20, 1984, for the express purpose of implementing the requirements of clause (iv) of section 3304(a)(6)(A). This action was stipulated to, and it was further stipulated that the California unemployment compensation law, as so amended, will be interpreted consistently in all respects with section 3304(a)(6)(A), as amended by Public Law 98-21. The stipulation further provides that the California unemployment compensation law, as interpreted, now conforms to the provisions of clause (iv) of section 3304(a)(6)(A), and that, accordingly, the issues stated in the Notice of Hearing are now resolved. Finally, as requested in the stipulation, the administrative law judge recommended that I issue an order dismissing the conformity proceedings against the State of California.

In view of these stipulated actions and understandings, I am satisfied that the California unemployment compensation

law now contains the provisions required by section 3304(a)(6)(A)(iv), and I find that the California law is now in conformity with the requirements of FUTA.

State of Idaho. On September 10, 1984, the Director of the Idaho Department of Employment Security issued a rule which became effective on October 1, 1984. In this connection, the Director provided the opinion of the Attorney General of Idaho holding that the Director has the authority under Idaho law to adopt such a rule. This rule was issued for the express purpose of conformance and compliance with the requirements of clause (iv) of section 3304(a)(6)(A). This action was stipulated to, and it was further stipulated that the Idaho unemployment compensation law and the aforementioned rule will be interpreted consistently in all respects with section 3304(a)(6)(A), as amended by Public Law 98-21. Accordingly, it was agreed in the stipulation agreement that issuance and interpretation of the Idaho unemployment compensation law and the rule is sufficient, for the purposes of these 1984 conformity proceedings, to conform the Idaho law to the provisions of clause (iv) of section 3304(a)(6)(A). It was, however, expressly stipulated that this agreement is not binding on DOL for other than these 1984 conformity proceedings. Finally, as requested in the stipulation, the administrative law judge recommended that I issue an order dismissing the conformity proceedings against the State of Idaho.

In view of these stipulated actions and understandings, I am satisfied that the Idaho unemployment compensation law currently contains the provisions required by section 3304(a)(6)(A)(iv), and I find that the Idaho law now conforms with the requirements of FUTA.

State of Montana. The State of Montana Department of Labor and Industry has stipulated that the Montana unemployment compensation law fails to conform with the requirements of the Federal law as specifically set forth in the Notice of Hearing. Accordingly, I find that the Montana unemployment compensation law does not contain the provisions required by clauses (ii), (iii) and (iv) of section 3304(a)(6)(A) of FUTA, as amended by section 521 of Public Law 98-21. Further, and in accordance with the stipulation agreement, the State of Montana will not be included in the listing of States with respect to which certifications are made by me to the Secretary of the Treasury on October 31, 1984 under sections 3303(b)(1) and 3304(c) of FUTA.

The State of Montana Department of Labor and Industry has further stipulated that it will diligently seek, under the State law and constitution, the enactment of a conforming amendment of the Montana unemployment compensation law at the earliest possible time, and that the conforming amendment shall be made effective for any weeks which begin after October 28, 1984.

Accordingly, and in accordance with the stipulations, I further find that the omission of the State of Montana from the certifications does not constitute a withholding of the 1984 certifications at this time. The 1984 certifications under sections 3303(b)(1) and 3304(c) of FUTA will be made, or affirmatively withheld, on or before January 31, 1985. If I receive, on or before January 18, 1985, a certified copy of the conforming amendment referred to above, I shall make the 1984 certifications with respect to the State of Montana under sections 3303(b)(1) and 3304(c) of FUTA. If I am not satisfied that conformity has been fully achieved, I will withhold those certifications for 1984 and so notify the Secretary of the Treasury.

Commonwealth of Puerto Rico. The Secretary of the Puerto Rico Department of Labor and Human Resources (PRDLHR) has promulgated a rule containing amendments to Puerto Rico's regulations, and has furnished DOL with a true copy of an English translation of the rule. The rule became effective on August 27, 1984, and is being implemented by PRDLHR for the express purpose of conforming and complying with the requirements of clause (iii) and (iv) of section 3304(a)(6)(A). An opinion of the Office of Secretary of Justice of Puerto Rico confirms the authority of the Secretary of PRDLHR to adopt such a rule. The adoption of the rule has been stipulated to, and it was further stipulated that the Puerto Rico unemployment compensation law and the

rule promulgated by the Secretary of PRDLHR has been, and will be, interpreted consistently in all respects with section 3304(a)(6)(A), as amended by Public Law 98-21. It was, accordingly, agreed in the stipulation that promulgation of the rule and interpretation of the Puerto Rico law is sufficient, for purposes of these 1984 conformity proceedings, to conform the Puerto Rico unemployment compensation law to the requirements of clauses (iii) and (iv) of section 3304(a)(6)(A). It was, however, expressly stipulated that this agreement is not binding on DOL for other than these 1984 conformity proceedings and that PRDLHR will diligently seek the enactment of conforming amendments to the Puerto Rico unemployment compensation law at the earliest possible time. Finally, as requested in the stipulation, the administrative law judge recommended that I issue an order dismissing the conformity proceedings against the Commonwealth of Puerto Rico.

In view of these stipulated actions and understandings, I am satisfied that the Puerto Rico unemployment compensation law currently contains the provisions required by section 3304(a)(b)(A), and I find that the Puerto Rico law is now in conformity with the requirements of FUTA.

Ordered. Therefore, it is Ordered that the conformity proceedings against the States of California and Idaho and against the Commonwealth of Puerto Rico on the issues set

forth in the Notice of Hearing are terminated in accordance with the individual stipulations entered into by DOL and the State of California, the State of Idaho, and the Commonwealth of Puerto Rico. Accordingly, I will certify to the Secretary of the Treasury the States of California and Idaho and the Commonwealth of Puerto Rico for the 12-month period ending October 31, 1984, in accordance with the provisions of sections 3303(b)(1) and 3304(c) of FUTA. The State of Montana, however, will not be included in the listing of States with respect to which certifications are made by me to the Secretary of Treasury under sections 3303(b)(1) and 3304(c) of FUTA.

Under Secretary of Labor

OCT 29 1984

CERTIFICATE OF SERVICE

Case Name: U.S. Dept. of Labor v. States of California, Idaho, Montana and Commonwealth of Puerto Rico

Case No.: 84-CCP-3

Document: FINAL DECISION AND ORDER

This is to certify that on October 29, 1984 a copy of the foregoing document was mailed to the following persons.

Clara Longus

CETIFIED MAIL

Carol L. Brassey
Deputy Attorney General
State of Idaho
Department of Employment
317 Main Street
Boise, Idaho 83735

William H. DuRoss, III
Associate Solicitor for
Employment and Training
200 Constitution Ave., N.W.
Washington, D.C. 20210

Bruce J. Janigian
Chief Counsel
Employment Development Dept.
800 Capitol Mall
Sacramento, CA 95814

Stanley T. Kaleczyc, Esq.
Browning & Kaleczyc
28 North Last Chance Gulch
P.O. Box 162
Helena, Montana 59624

EXHIBIT - 8
H. B. 15
1-9-85

Executive Office
P.O. Box 440
34 West Sixth
Helena, MT 59624
Phone (406) 442-3388

TESTIMONY
Wednesday, January 9, 1985
Unemployment Insurance Laws
Dealing with the Education System and Teachers

Mr. Chairman and Members of the Committee:

My name is George Allen. I am a registered lobbyist for the Montana Retail Association. I'm here to support House Bill #15.

As you know, Unemployment Insurance was set up for the purpose of supplying financial support for an employee who lost their job through no fault of their own. It was not intended as a financial supplement to a person's annual wage.

It seems to me that the intent of Unemployment Insurance was not to provide additional income for employees who were hired for a specific period of time or a specific job.

House Bill #15 would bring the state of Montana into conformity with the federal law.

We therefore urge you to support House Bill #15.

Thank you very much.

Respectfully,

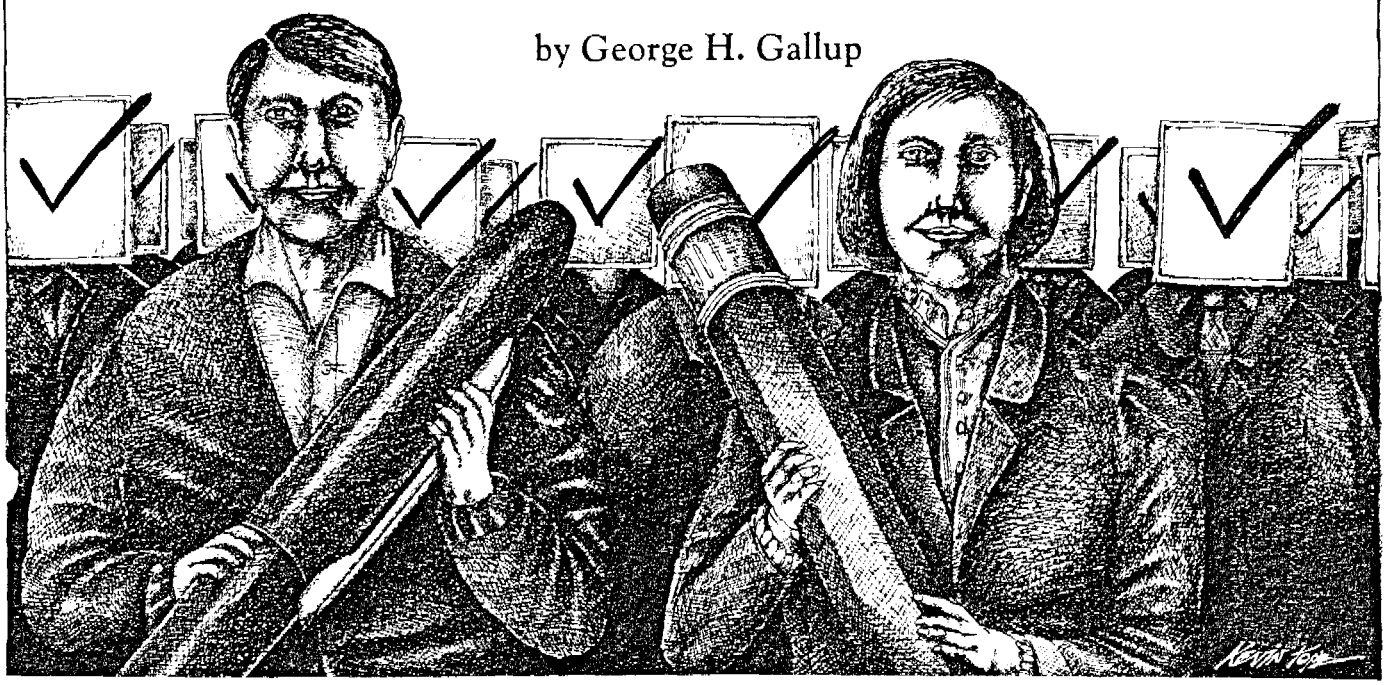
George Allen
Executive Vice President
Montana Retail Association

Reprinted from the September 1984 *Phi Delta Kappan*

H.B. 11 EXHIBIT 3
1-9-85

The 16th Annual Gallup Poll Of the Public's Attitudes Toward The Public Schools

by George H. Gallup



The annual Gallup Poll of the Public's Attitudes Toward the Public Schools, now financed by Phi Delta Kappa, is intended to be a continuing source of reliable information concerning trends in opinion about significant school questions. For school officials, the poll is valuable in at least two ways: it alerts decision makers to overall public reaction to a variety of school programs and policies, and it serves as a national benchmark against which local attitudes can be measured.

Local officials are welcome to use questions asked in the Gallup education surveys. The questions are not copyrighted. Moreover, no limits are placed on the use of information contained in these reports, beyond customary credit to the source and observance of the canons of accuracy and completeness of quotation.

Phi Delta Kappa's Dissemination Division, assisted by the Gallup Organization, is prepared to help school districts and other agencies survey local populations on education questions. For details of this service, called PACE (Polling Attitudes of the Community on Education), write or telephone Wilmer Bugher, associate executive secretary for administration, Phi Delta Kappa, P.O. Box 789, Bloomington, IN 47402. The phone number is 812/339-1156.

Illustration by Kevin Pope

Nearly 100 Phi Delta Kappans and education writers offered suggestions for this year's poll. We wish to thank them for their cooperation. We are also grateful to the panel assembled by Phi Delta Kappa last January to discuss poll questions with George Gallup and members of his staff at the headquarters of the National School Boards Association in Washington, D.C. The panel was composed of Adrienne Bailey, vice president for academic affairs, College Board; Michael J. Bakalis, professor of education and public management, School of Education, Northwestern University; David Bednarek, education writer for the *Milwaukee Journal*; Ben Brodinsky, education consultant; Jerome G. Kopp, president of Phi Delta Kappa and principal of Downey High School in Modesto, California; Anne Lewis, executive editor, *Education USA*; Glen Robinson, executive director, Educational Research Service; Thomas Shannon, executive director, National School Boards Association; John Vasconcellos, chairman, Assembly Ways and Means Committee, State of California; and Gary Wittlich, professor of music, Indiana University. Representing the Phi Delta Kappa headquarters staff were Lowell Rose, executive secretary; Robert W. Cole, Jr., editor, *Phi Delta Kappan*; and myself. — *Stanley Elam*, coordinator, Gallup-Phi Delta Kappa Education Poll.

VISITOR'S REGISTER

HOUSE EDUCATION & CULTURAL RESOURCES COMMITTEE

BILL HB 11; HB 15, HB 100 DATE JANUARY 9, 1985

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Eric Feaver	Helena	MEA		
Steve Vick	Bolt	CEAM		
Rick Vaught	Bozeman	Christian Ed. Ass of MT (CEAM)		
Phil Campbell		MEA		
Kathy Harrington	Butte	Intern		
Chip Erdmann	Helena	MSBA		
George O'Brien	Helena	Mt. Retail Assn	LS	
Tom Judge	Helena	MT STATE AFL-CIO		Amend X
Jack Tooley	Helena	School Adm of MT		
Katherine	Helena	MACSS		X
F.H. Boles	Helena	Mont. Chamber	X HB15	
Dave Brown	Butte-Silver Bow	District #72	100	
Chad Smith	Helena	Intergov Comp Advisory	HB 15	
W.M. Kirkpatrick	Missoula		HB 15	
Margaret Swenson	Havre			
Wilbur Swenson	Havre			
Jim McGarvey		Mont Federation Teachers		
Don Waldron	Helena	Helena Elem. Teach. Assoc.	HB 15	
Tom Schneider	MPEA, Helena	MPEA	15	X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 15, 1985

The second meeting of the Labor and Employment Relations Committee was called to order by Chairman J. D. Lynch at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 15:

Chairman Lynch called on Representative Mel Williams, sponsor of House Bill 15. House Bill 15 is an act to deny unemployment insurance benefits to nonprofessional school employees between academic terms and all school employees during vacations and holidays; to provide retroactive payment of certain benefits; and to bring the Montana Unemployment Insurance Law into conformity with federal law.

PROPONENTS OF HOUSE BILL 15:

Dave Wanzenried, Commissioner of the Montana Department of Labor and Industry, rose in support of House Bill 15 and handed out information. (Exhibit No. 1)

Forrest Boles, President, Montana Chamber of Commerce, rose in support of House Bill 15.

Chip Erdmann, representing the Montana School Board Association, submitted written testimony in support of House Bill 15. (Exhibit No. 2)

OPPONENTS OF HOUSE BILL 15:

Don Judge, representing Montana State AFL-CIO, submitted written testimony in opposition to House Bill 15. (Exhibit No. 3)

Terry Minow, representing Montana Federation of Teachers, submitted testimony in opposition to House Bill 15. (Exhibit No. 4)

QUESTIONS FROM THE COMMITTEE:

There were no questions asked.

Dave Wanzenried proposed amendments to House Bill 15. (Exhibit No. 5)

Representative Williams closed on House Bill 15.

The hearing was closed on House Bill 15.

CONSIDERATION OF SENATE BILL 70:

Chairman Lynch called on Senator Gary Aklestad, sponsor of Senate Bill 70. Senate Bill 70 is an act exempting payment of prevailing wage rates on some local government projects.

PROPONENTS OF SENATE BILL 70:

F.H. Boles, representing the Montana Chamber of Commerce, submitted testimony in support of Senate Bill 70. (Exhibit No. 6)

Riley Johnson, representing Montana Homebuilders Association, Professional Insurance Agents and National Federation of Independent Business, submitted testimony in support of Senate Bill 70. (Exhibit No. 7)

OPPONENTS OF SENATE BILL 70:

Jim Schwind submitted testimony in opposition to Senate Bill 70. (Exhibit No. 8)

Don Judge, representing Montana State AFL-CIO, submitted testimony in opposition to Senate Bill 70. (Exhibit No. 9)

Gene Fenderson, representing Laborers Local #254, rose in opposition to Senate Bill 70.

Larry Persinger, representing Montana State Building and Trades Council, rose in opposition to Senate Bill 70.

Bill Morton, representing Montana Painters District Council #59, rose in opposition to Senate Bill 70. (Exhibit No. 10)

Alan R. Solum, President of FCMT&LC, submitted testimony in opposition to Senate Bill 70. (Exhibit 11)

QUESTIONS FROM THE COMMITTEE:

No questions were asked.

Senator Aklestad closed on Senate Bill 70.

The hearing was closed on Senate Bill 70.

EXECUTIVE ACTION ON SENATE BILL 29:

Senator Haffey made a motion that Senate Bill 29 Do Not Pass. On a voice vote the committee voted unanimously that Senate Bill 29 Do Not Pass.

EXECUTIVE ACTION ON HOUSE BILL 15:

Senator Towe made a motion that House Bill 15 Be Concurred In. Senator Blaylock moved that the committee vote on the amendments offered by Commissioner Wanzenried. (Exhibit No. 5)

On a roll call vote, the vote was tied so the motion failed. See attached roll call vote sheet. On a roll call vote the committee voted 6-2 in favor of the motion made by Senator Towe that House Bill 15 Be Concurred In. See attached roll call vote sheet.

Senator Towe will carry the bill.

ADJOURNMENT:

The committee, having no further business, adjourned at 2:45 p.m.

J.D. Lynch

J.D. Lynch, Committee Chairman

STANDING COMMITTEE REPORT

January 15 19 85

MR. PRESIDENT

We, your committee on Labor and Employment

having had under consideration House Bill No. 15

third reading copy (blue color)

DENYING CERTAIN UNEMPLOYMENT BENEFITS TO SCHOOL EMPLOYEES

Respectfully report as follows: That House Bill No. 15

BE CONCURRED IN

~~XXXXS~~

~~XXXXXXS~~

Chairman.

Labor and Employment COMMITTEE

48th LEGISLATIVE SESSION -- 1985 Date 1/15/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Aklestad	X		
Senator Blaylock	X		
Senator Haffey	X		
Senator Keating	X		
Senator Manning	X		
Senator Thayer	X		
Sentor Towe	X		
Chairman Lynch	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE January 15 1985 BILL NO. HB 15 TIME

NAME	YES	NO
SENATOR AKLESTAD		X
SENATOR BLAYLOCK	X	
SENATOR HAFFEY	X	
SENATOR KEATING		X
SENATOR MANNING	X	
SENATOR THAYER		X
SENATOR TOWE		X
CHAIRMAN LYNCH	X	

Beth Shultz
SECRETARY

J.D. LYNCH

Motion: Amendments to House Bill 15

1985

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

DATE January 15 1985 BILL NO. HB 15 TIME

NAME	YES	NO
SENATOR AKLESTAD	X	
SENATOR BLAYLOCK	X	
SENATOR HAFFEY	X	
SENATOR KEATING	X	
SENATOR MANNING		X
SENATOR THAYER	X	
SENATOR TOWE	X	
CHAIRMAN LYNCH		X

Bev Nacy
SECRETARY

J.D. LYNCH

Motion: Be Concurred In.

1985

DATE January 15, 1985

COMMITTEE ON Labor + Employment

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jim Schwend	Self	SB70	?	
Don Judge	Mt State AFL-CIO	SB70		X
" "	" " " "	HB15		X
Michael Hunt	Mt St. Firemans assoc	SB70		X
Eugene Fenderson	Laborers 254	SB 70		X
Joe Roseman	Teamsters Joint Council	SB 70		X
Barry Deroinger	Montana State Building & Construction Trades Council	SB 70		X
Bill Morton	Montana Painters Dist. Council #59	SB70		X
Edeen Robbins	Montana Nurses Assoc	SB2		X
F.H. Boles	Montana Chamber	HB15 SB70	X	X
Randy E. Crawford	International Bro of Boilermakers Ironshipbuilders & Joiners	SB70		X
Tom Ryan	—	SB 70	—	—
[illegible]	Self	SB 70	—	—
Terry Minow	MFT	HB15		X
Dave Goss	Bigs Chamber of Commerce	HB15 SB70		
Chris Ekanger	MT School Bd Assoc	HB15	X	
Riley Johnson	Mont. Homebuilders, NFIB	SB70	X	
Todd Hudak	MT Montana Education Coalition		Info	
Geoff Zinn	Missoula Chamber	SB70		
Lauri Craig	MT State University System	HB15 SB70		
Richard Clough	Dept of Labor	HB15	X	

(Please leave prepared statement with Secretary)

1/15/85

U.S. Department of Labor

Employment and Training Administration
601 D Street, N.W.
Washington, D.C. 20213

MEMORANDUM FOR: LUIS SEPULVEDA
Regional Administrator, Denver

FROM: BERT LEWIS
Administrator for
Regional Management

SUBJECT: Montana-1985 Legislative Proposals

Thank you for sending us the 1985 legislative proposals submitted by the Montana State agency. We appreciate the opportunity to review them before they are introduced. Our comments on these proposals were discussed on December 19 and 21, 1984 in telephone conversations between Martha Lopez of the Unemployment Insurance Service, Peg Hartman, UI Division Chief of the Montana State agency, and other State agency staff. Following is a summary of our comments and discussions with State agency staff.

PROCEDURES FOR COLLECTING UNPAID CONTRIBUTIONS

This proposal would amend existing collection procedures by providing that unpaid contributions have the effect of a judgment, arising at the time the contributions are due. No Federal issues would be raised by this proposal.

REQUIREMENT THAT EMPLOYMENT TO PURGE DISQUALIFICATIONS BE COVERED EMPLOYMENT

This proposal would amend several sections of Montana's law to require that employment to purge disqualifications be "covered" employment as defined by Section 39-51-203 of the State's law. As presently worded, this proposal would require claimants to work in covered employment in Montana to satisfy a disqualification. We believe that this proposal could raise an issue under Section 3304(a)(9)(A) of the Federal Unemployment Tax Act (FUTA).

Section 3304(a)(9)(A) states that compensation may not be denied or reduced because an individual resides or files a claim in another State. This Federal law requirement gives a claimant the right to have all of his earnings, regardless of where they are earned, considered in determining his eligibility for benefits. In addition, a claimant who works in more than one State may not be treated less favorably than a claimant who works only in one State.

Requiring that a disqualification be satisfied only by earnings in covered employment in Montana would prevent a claimant from using earnings outside the State to requalify for benefits. He would not be treated the same as someone who had worked only in Montana. Therefore, we recommended to the State agency that this proposal be revised to read that each of the disqualifications listed may be satisfied by "insured employment in this or any other State." Ms. Hartman stated that it was not the State agency's intention to exclude earnings covered by other States and that the proposal would be revised.

MODIFICATION OF SUITABLE WORK CRITERIA AFTER 13 WEEKS OF UNEMPLOYMENT

In reviewing the above proposal on disqualifications, it was noted that the State law contains a provision modifying the definition of "suitable work" after a claimant has been unemployed for 13 weeks. The law states that after 13 weeks, work will be considered suitable if it pays 75% of the prevailing wage. This provision appears to conflict with Section 39-51-2304(3)(b) of the State law which provides that, notwithstanding any other provisions of the law, no work may be considered suitable if the wages, hours, or other working conditions are substantially less favorable than those prevailing for similar work in the locality. This section of State law reflects the requirements for suitable work in Section 3304(a)(5)(B), FUTA.

As we indicated to the State agency, the 13-week provision could result in claimants being denied benefits under conditions prohibited by Federal and State law. In addition, a job paying 75% of the prevailing wage could in many cases pay less than the minimum wage. We are also unclear how the agency handles weeks of partial or nonconsecutive unemployment.

The intent of the provision is to require claimants to broaden their work search the longer they remain unemployed. We agree with this objective, but believe that other provisions in Section 39-51-2304(2) of the State's law already require the agency to consider length of unemployment in determining whether work is "suitable." This section also permits the agency to consider other important factors and individual circumstances, rather than setting an arbitrary standard for suitable work.

Based on these considerations, we recommended that Section 39-51-2304(4) be deleted from the State's law. Ms. Hartman stated that the agency would consider our recommendation. If legislation is not introduced to delete this provision, we

request that you ask the State agency to provide us with written assurances that the requirement in Section 39-51-2304(3)(b) will always override that in Section 39-51-2304(4).

INTEREST ON FRAUDULENT OVERPAYMENTS

This proposal would require that fraudulently obtained benefits be repaid with interest of 18% per year. It is entirely within the State's authority to require such a penalty. We are concerned, however, that the State agency may implement this provision by offsetting a claimant's future benefits to satisfy the penalty as well as the overpayment.

As we explained to the State agency, recouping overpaid benefits by offset is allowed by Federal law because the benefits were erroneously paid from the State's unemployment fund. However, offsetting benefits to pay penalties or fines has been consistently interpreted as violating Section 3304(a)(4), FUTA, and Sections 303(a)(1) and (5) of the Social Security Act (SSA).

Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, allow monies to be withdrawn from a State's unemployment fund only to pay benefits. Section 303(a)(1), SSA, requires States to employ methods of administration which will ensure full payment of benefits to claimants when due. Offsetting future benefits to pay interest or penalties on an overpayment would constitute an improper reduction in the amount of unemployment compensation payable to a claimant. Therefore, it would not be consistent with these Federal law provisions.

Ms. Hartman stated that the agency would take appropriate action to ensure that claimants are not required to pay interest on overpayments by offset of future benefits.

MODIFICATION OF BASE PERIOD IN CASES OF DISABILITY

This proposal would modify the definition of "base period" for individuals who are temporarily disabled. It would not raise a Federal issue.

UNEMPLOYMENT TRUST FUND SOLVENCY

This proposal would make a variety of changes in State law to improve unemployment trust fund solvency. Major items include increasing the taxable wage base and increasing contribution rates to a maximum of 6.4%. We have comments on only one of these provisions, the establishment of a surtax to repay Federal advances to the State's unemployment fund.

The proposal states that the surtax "will be paid in the same manner as regular contributions." We recommended that the agency also include language similar to that in Section 39-51-408 of the State's law, specifying that the surtax is separate from regular contributions and into which fund or account it will be deposited.

We also recommended amending Section 39-51-408(c) to provide that interest on Federal advances not be deposited in the unemployment insurance account, if this is the same account from which benefits are paid. Section 3304(a)(17), FUTA, states that interest may not be paid either directly or indirectly from a State's unemployment fund. For further information on how interest must be paid, we suggested the State agency review Unemployment Insurance Program Letter No. 29-84, dated August 22, 1984.

ASSESSMENT OF .1% FOR ADMINISTRATION

This proposal is designed to meet the requirements in the stipulation entered into in the 1983 Montana conformity/substantial compliance case, No. 83-CCP-1, signed by the Montana State agency and the Department of Labor on September 28, 1983. Under the terms of the stipulation, it was agreed that the State agency would interpret Section 39-51-404(4) of the State law to "impose a separate assessment upon employers and a corresponding reduction in their 'contributions' to the State unemployment fund, rather than to divert employer 'contributions' from the State unemployment fund." In addition, the State agency agreed to seek conforming amendments to its law no later than June 30, 1985.

The proposal submitted by the agency would amend Section 39-51-404(4) of the State law to read, "an assessment equal to .1% of all taxable wages as defined by 39-51-1108 and .05% of total wages paid by employers not covered by experience rating shall be charged to all employers and may be used by the department for administrative purposes. All such assessments must be deposited in the unemployment insurance account provided for in 39-51-406 and used as appropriated by the legislature."

Our review of this proposal indicates that the assessment is separate from and would be paid in addition to all other contributions. Ms. Hartman confirmed that the proposed assessment would be in addition to an employer's regular contribution under experience rating. For example, an employer who is subject to a contribution rate of 6.4% under experience rating would pay a total of 6.5%. This proposal, if enacted by June 30, 1985, will satisfy the requirements of the stipulation in case No. 83-CCP-1.

Ms Hartman also asked about a related idea which the agency did not submit in writing, but which could be added to this proposal. She said the agency would like to amend the definition of "contributions" in Section 39-51-201(9) of the State law. This section currently defines "contributions" as "money payments to the state unemployment fund required by this chapter." The agency would like to add a sentence which reads, "This definition does not apply to Section 39-51-404(4)." We concurred and suggested that the agency also exclude from the definition of "contributions" the State law sections establishing the surtax to repay Federal advances and the assessment to pay interest on Federal advances.

BETWEEN/WITHIN TERMS DENIAL

This proposal is designed to meet the requirements in the Under Secretary of Labor's decision in Case No. 84-CCP-3, signed on October 29, 1984. This decision states that Montana law does not contain the provisions required by clauses (ii), (iii) and (iv), FUTA, as amended by Section 521 of Public Law 98-21. The decision further states that a certified copy of satisfactory conforming legislation must be received by January 18, 1985, in order for the Under Secretary to make the 1984 certifications of Montana law under Sections 3303(b)(1) and 3304(c), FUTA.

The proposal submitted by the State agency contains several provisions which would not conform to Federal requirements. For example, it requires the retroactive payment of benefits to both professional and nonprofessional employees of educational institutions, whereas Federal law allows retroactive payments only for nonprofessional employees. The agency had earlier submitted a proposal which closely followed the language in Federal law. As indicated in our memorandum to you dated August 21, 1984, this earlier prosposal was considered satisfactory with one minor exception.

Because of the short time available to resolve this issue, we recommended that the State agency substitute its earlier approved proposal for the later one. Ms. Hartman agreed that the agency would use the earlier proposal.

MISCELLANEOUS CHANGES

This proposal makes a variety of changes in State law mostly of an administrative nature. We question only Section 11 of the proposal which would repeal Section 39-51-304 of the State law. This section includes the requirement that the agency will hire in accordance with merit system principles adopted by the merit system council. This requirement parallels that in Section 303(a)(1), SSA.

Ms. Hartman stated that this section was being repealed because the merit system council had been abolished. The functions of the council are now being handled by the Department of Personnel Administration. Because merit system hiring is required by Federal law, we recommended that Section 39-51-304 of the State law be amended rather than repealed. Ms. Hartman stated that the proposal would be revised accordingly.

CONCLUSION

Please thank Ms. Hartman and the other State agency staff for their cooperation in reviewing these proposals. In addition, please review this memorandum with the agency to ensure that our understanding of the actions the agency will take is correct. We also ask that you keep us informed of the status of these proposals once the legislature convenes in January, 1985. Thank you for your help.

Exhibit No. 2
1/15/85

NAME Chip ERDMANN BILL NO. HB15

ADDRESS Helena DATE 1/15/85

WHOM DO YOU REPRESENT MT School Bds Assoc

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support this bill

1) Many school district employee realize they are hired for a 9 month school year.

2) Many of these employees request unemployment during the summer. which increases the unemployment rate of school districts - school districts will save $1.7 million per year

3) this essentially is not what the unemployment insurance was designed for - it was designed for those who are unable to find employment - not those who are assured of job each September

4) If the Committee deems it requires written assurance individual should be a req-

Told at one time if we gave written contracts in the spring - these employees would not be eligible for summertime unemployment - but this was not to be.

MONTANA STATE AFL-CIO
APRIL 29 1956

Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
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TESTIMONY OF DON JUDGE ON HOUSE BILL 15, BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, JANUARY 15, 1985

Mr. Chairman, members of the Committee, my name is Don Judge and I'm appearing here on behalf of the Montana State AFL-CIO to testify on House Bill 15.

Unemployment compensation insurance was created to provide a buffer for main street merchants during an economic slowdown by helping to sustain consumer buying power. It was created to help workers temporarily unemployed by providing partial wage replacement until a job could be found. Over the years, this program has proven an important economic tool, balancing the economy during the lows of recessions and depressions. During the first nine months of 1984, unemployment insurance benefits put close to $46 million back into the suffering Montana economy.

In the name of fiscal responsibility, proposals are sometimes made to limit coverage of this economic safeguard. One such measure, House Bill 15, seeks to deny unemployment insurance benefits to employees such as the cooks, custodians, bus drivers, teachers' aides and clerical workers in our school districts and educational institutions. These workers are traditionally underpaid and hold jobs with little opportunity for internal advancement. And yet they serve as an integral part of the education of our youth; without them, our systems couldn't function.

Many of these workers serve as the sole support of a household. When the school term ends, they must seek other employment in order to maintain payment for the basic necessities. The fact is, few employers are willing to hire workers who may be available only for a few months each summer. Unemployment benefits provide a necessary buffer zone for those employees who are actively searching for work, but who are not successful in finding a job.

These proposed changes in the law would remove that safety valve. Nonprofessional workers employed by the school districts would now have to seriously weigh the possibility of being able to find work over the summer months, or of surviving without income if unsuccessful in that search for employment, some workers will not take that chance and will seek work permanently outside of the education system.

Montana schools are the losers if this happens. We lose the valuable expertise and experience that comes with years spent on the job by seasoned employees.

Accepting the fact that the federal government is requiring this legislation, and having related to you the negative impacts of the bill, I would now like to address some specifics within the bill.

As proposed on page 2, lines 21 through 25, affected workers would be required

register for unemployment insurance benefits each week during the summer months, in anticipation of the possibility that they would not be reemployed at the beginning of the next school term and thus, might be eligible to retroactively collect benefits. This requirement is burdensome and unfair.

On page 2, lines 7 and 16, and on page 3, line 7, the term "reasonable assurance" is used to define the indication that an employee will be rehired. If the committee finds it acceptable to the federal government, we would suggest language to provide that the assurance is in written form from the employer.

Mr. Chairman, members of the committee, we don't like this bill, or the position the federal government has put Montana in to adopt this law. However, we recognize the position you are in and would encourage you to make these provisions as least burdonsome as possible.

Thank you.

(This sheet to be used by those testifying on a bill.) Exhibit No. 4
1/15/85

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REPRESENTING WHOM? Montana Fed of Teachers

APPEARING ON WHICH PROPOSAL: HB 15

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENT: Oppose HB 15

Unfair bill

It hurts those at the lowest end of the salary schedule

Feel its a case of Federal interference with State's rights

Realize it will pass Thankyou for allowing the MFT to express our frustration with this measure

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Proposed amendments to HB 15, third reading copy

1. Page 2, line 7.
Following: "assurance"
Insert: "in writing from the employer"

2. Page 2, line 16.
Following: "assurance"
Insert: "in writing from the employer"

3. Page 3.
Following: line 19
Insert: "NEW SECTION. Section 2. Termination of provision upon disapproval. If the United States secretary of labor shall fail to approve any word, phrase, clause, or provision of this act that word, phrase, clause, or provision shall immediately terminate and have no force and effect. The remainder of this act does not terminate and has full force and effect.
Renumber: subsequent section